IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1766 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHBHAI CHHOTUBHAI VASAVA

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR KT DAVE, AGP, for the respondents

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 25/04/2000

ORAL JUDGEMENT

1. District Magistrate, Surat, passed an order on August 20, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner-Rameshbhai Chhotubhai Vasava of Mangrol taluka of Surat district.

2. The authority took into consideration eight offences registered against the detenu and statements of two witnesses, whose identity is not disclosed by the detaining authority in exercise of powers under Section 9(2) of the PASA Act by claiming privilege in public interest. The detaining authority found that the activities of the detenu, as a bootlegger, are detrimental to public order and, therefore, he is required to be immediately prevented from pursuing his activities. The authority found that the goal cannot be achieved by resorting to less drastic remedies under ordinary laws and, therefore, the detenu was detained under the provisions of the PASA Act.

3. The petitioner challenges the order of detention on various counts. However, Ms. Patel, learned advocate appearing for the petitioner submitted that there is improper exercise of powers under Section 9(2) of the PASA Act, as the statement of anonymous witnesses are not verified by the detaining authority herself, but reliance is placed on verification by Dy.S.P. Assailing the eight registered offences, Ms. Patel submitted that in none of the cases, statements of witnesses recorded under Section 161 of the Code of Criminal Procedure has been examined by the detaining authority and supplied to the detenu. This would vitiated the order of detention. As regards the last offence, namely, Mangrol C.R. No.52 of 1999, it is contended that copy of bail application and copy of bail order in respect of this offence have not been supplied. It was, therefore, urged that the petition may be allowed and the order may be quashed and set aside.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition. According to him, the involvement of the petitioner is in as many as eight offences. There are statements of two anonymous witnesses and the subjective satisfaction is recorded by the detaining authority on basis of this material. The Court, therefore, may not entertain this petition.

5. Having regard to rival side contentions, it may be noted, at the outset, that the statements of anonymous witnesses are not verified by the detaining authority. The detaining authority has not filed any affidavit in reply. Even if the grounds of detention are seen, the detaining authority has relied on the verification made by the Dy.S.P. There is, therefore, nothing to support recording of subjective satisfaction in respect of the fear expressed by the witnesses being genuine qua the detenu. There is nothing to indicate that the

said powers were exercised by the detaining authority in public interest after considering the interest of the detenu, namely, right of making an effective representation. No exercise appears to have been undertaken to consider the background, antecedents, character, etc. of the detenu. The subjective satisfaction of the detaining authority regarding the fear expressed by the witnesses qua the detenu being genuine, therefore, cannot be accepted. The exercise of powers under Section 9(2) of the PASA Act, therefore, is bad in law. This would, therefore, affect the right of the detenu of making an effective representation under Article 22(5) of the Constitution.

6. So far as the registered offences are concerned, apart from the fact that offences at Sr. No.1 to 6 being stale as they are of 1996 and 1997, offences except last are pending trial, meaning thereby that charge sheet is already filed before the order of detention was passed. It transpires from the compilation supplied to the detenu along with the grounds detention that in none of the cases, the detaining authority has considered the statements of witnesses recorded under Section 161 of Code of Criminal Procedure during the course of investigation of these offences. This would vitiate the order of detention apart from it infringing the right of the detenu of making an effective representation. In Jeeva Veiyapuri Madrasi V-8. Commissioner of Police & angry 1991(1) GAL 346, non-consideration of statements of witnesses recorded under Section 161 of Code of Criminal Procedure by the detaining authority was held to be sufficient to vitiate the subjective satisfaction. As regards Mangrol Police Station C.R. No.52 of 1999, it appears that the detenu has not been supplied bail application and bail order. Therefore, this would affect the right of the detenu of making a representation effectively.

7. The outcome of the above discussion is that none of the grounds considered by the detaining authority can be said to be sufficient for recording a subjective satisfaction about the detenu being a bootlegger or a dangerous person or about the activities of the detenu being detrimental to public order. The order, therefore, cannot be sustained. The petition deserves to be allowed.

8. In the result, petition is allowed. The impugned order of detention dated August 20, 1999, passed against the detenu is hereby quashed. The detenu-Rameshbhai Chotubhai Vasava is ordered to be set

at liberty forthwith, if not required ins any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]
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